HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.19938 OF 2005

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Between:
M/s.David Memorial College of Education for Women,
Yacharam village and Mandal, Ranga Reddy District rep. by its
Chairman & Correspondent Dr.R.James David.

…Petitioner

A n d

The State of Andhra Pradesh rep by its Principal Secretary
School Education Department, Secretariat, Hyderabad and others

…Respondents.

:: **ORDER** ::

Counsel for the Petitioner : Sri B.Narayana Reddy

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

DATED : 09.2006

Per G.V.Seethapathy, J

This writ petition has been filed seeking a writ of mandamus declaring the action of the third respondent in not according permission to the management of the petitioner college for conversion of the seats methodology-wise for the left over seats in 85% minority quota to be filled with non-minority candidates, as being arbitrary, illegal and violative of Articles 14 and 30(1) of the Constitution of India and also contrary to the orders passed by the Division Bench in WAMP.No.1767 of 2005 in Writ Appeal No.928 of 2005 and batch, dated 27.4.2005 and consequently direct the respondents to ratify the admissions made by the petitioner college by conversion methodology-wise of the left over seats filled with non-minority candidates.

The petitioner namely, David Memorial College of Education, is a minority educational institution. The fourth respondent, Convenor, Ed-CET conducted entrance test for admission of students in minority institutions for the year 2004-2005. The first respondent-State of Andhra Pradesh issued G.O.Ms.No.57, School Education (Training A-1) Department, dated 21.3.2005 (for short, `the G.O'), whereby it prescribed the criteria for determining the minority status of the candidates for admission in minority Colleges of Education and also the procedure for filling up the left over seats against 85% management quota. The same was challenged in a batch of writ

petitions. By an order dated 19.4.2005, the learned Single Judge dismissed Writ Petition Nos.5750, 6162 and 8348 of 2005. Writ Appeal No.928 of 2005 filed against the order of the learned Single Judge was dismissed by the Division Bench on 23.8.2006 along with other connected matters filed by the minority educational institutions questioning the legality of G.O.Ms.No.57, dated 21.3.2005.

During the pendency of Writ Appeal No.928 of 2005 and batch, the Division Bench passed interim order dated 27.4.2005 in WAMP.No.1767 of 2005 and batch. The relevant extracts of that order are reproduced below:

> "Therefore, we direct that the minority institutions shall be entitled to make admissions in accordance with the G.O., i.e., 85% from the minority candidates and 15% as management quota from any community. However, if any seats remain unfilled from 85% of the minority quota, they shall also be filled up by the management of respective colleges from the Ed.CET list strictly in accordance with the merit after giving wide publicity to the methodology to be adopted for making the selection. After the selection is made, that shall not be published before furnishing a copy to the Convenor of Ed.CET, who shall ensure that the selection has been made in accordance with the merit. It shall be open for him to bring to the notice of the management to cancel the admission of a candidate, if it is not made in accordance with the merit and the view of the Convenor in such a case shall be final.
>
> Coming to the second condition relating to the Conversions, we feel it will be proper and just, at this stage, to direct that the religion of a candidate shall be determined on the basis of his/her S.S.C certificate or any equivalent certificate'.

The petitioner's grievance is that even though in terms of G.O.Ms.No.26, School Education (Training-A1) Department, dated 3.2.2005, it has the discretion to make admissions against the

management quota and the unfilled seats of one methodology can be transferred to other methodologies, respondent No.4 is not according permission for conversion of the seats.

Heard learned counsel for the petitioner and perused the record. Clause 6 of G.O.Ms.No.26, dated 3.2.2005, which has bearing on the petitioner's case reads as under:

> **"6. Un-aided Minority Colleges of Education**
>
> **(i) 55% Manaagement Seats – to be filled with Minority candidates only**
>
> The management of private un-aided Minority colleges of Education shall admit the candidates to the extent of 55% of intake belonging to **concerned minority community** who are eligible and qualified in Common Entrance Test conducted by Government (Ed.CET) or Common Entrance Test conducted by Association of Managements of Colleges of Education (Ed.CET-AC) as per the option already exercised by them with the Permanent Committee.
>
> (a) The admissions to the **"55% Management Seats"** shall be methodology wise as per merit ranking among the minority candidates applied to the college duly following the transparent method prescribed in the rules.
>
> (b) The existing rules of reservation for special categories i.e. NCC/Sports/CAP/PHC and Women are to be followed as prescribed in the rules.
>
> (c) If seats are vacant in any methodology due to non-availability of minority candidates in that methodology, such vacant seats shall be filled with the minority candidates belonging to other methodology as per merit with prior permission of Regional Joint Director of School Education concerned duly producing all relevant records.
>
> (d) Still, if the management is unable to get sufficient number of concerned minority candidates, such seats can be filled with non-minority candidates who are qualified in the Ed.CET/Ed.CET-AC (as per the option exercised already) duly following the merit and rules of reservation with prior approval of the Regional Joint

Director of School Education concerned. However, the provisions of G.O.Ms.No.1, Minorities Welfare (M&R) Department, dated 16.01.2004 have to be fulfilled if the minority status of the college is to be retained.

(e) 85% of the seats covered under **"55% Managaement seats"** in each methodology shall be allocated to the local candidates and remaining 15% of the seats shall be unreserved for which Andhra University, Osmania University, Sri Venkateswara University local candidates and non-local candidates of Andhra Pradesh can compete in combined merit order of concerned minority.

(ii) 15% - Management Seats – to be filled with Minority or Non-Minority candidates

The management shall fill 15% of seats with eligible and qualified candidates as per merit in Ed.CET/Ed.CET-AC (as per the option exercised already)

(ii) 30% - Convener Seats – to be filled by the Convener

The remaining 30% of seats shall be filled by the Convener, Ed.CET from the common merit list of Ed.CET as per Rules."

G.O.Ms.No.26, dated 3.2.2005 was modified by G.O.Ms.No.55, School Education (Training-A1) Department, dated 20.03.2005, the relevant portion of which is reproduced below:

"2. In the reference 2nd read above, the Treasurer of Minority B.Ed Colleges Association has submitted representation to the Government for consideration on the following:-

(i) to delete the provisions in Rules 6(iii) and 7 in G.O.Ms.26, Education Department dated:3.2.2005 and allow them to follow the rules issued in G.O.Ms.No.405 Education Department dated:6.11.1995 and G.O.Ms. No.570, Education Department dated:16.6.2004 for academic year 2004-05; and

(ii) to delegate the powers for approving the list of candidates admitted in minority colleges to Regional Director concerned instead of State Council for Higher Education as ordered in G.O.Ms.No.26 Education

Department dated:3.2.2005.

3. Government examined the matter in detail, and hereby accept the demand No.(i) above duly exempting the provisions in Rules 6(iii) and 7 of G.O.1st read above for the academic year 2004-05 and reverting the quota to the extent of 85% and 15% of management quota with the concerned minority candidates and management quota respectively. Regarding determining the minority status of the candidate, SSC records may be taken into consideration while admitting the students in minority quota. In regard to demand No.(ii) above, Government after due consideration rejected the same."

G.O.Ms.No.57, dated 21.03.2005 was issued in continuation of G.O.Ms.No.55, dated 20.03.2005 and in supercession of the orders issued in G.O.Ms.No.405, dated 6.11.1995, G.O.Rt.No.570, dated 16.06.2004 and G.O.Rt.No.478, MW Dept., dated 27.12.2004.

The criteria prescribed in the G.O. for determining minority status of the candidates reads as under:

"(i) Criteria for determining minority status of the candidates:-

As there were reports of students/candidates obtaining religious conversion certificates overnight by exploiting the provisions contained in G.O. 5th above, the following condition is prescribed. For the purpose of determining the minority status of candidates seeking admission into 85% management quota in the B.Ed., minority colleges, the Secondary School Certificates or Transfer Certificates (T.C.) from the school from which they have studied shall be the basis. In the absence of a T.C., the candidate should obtain a certificate from the Head of the Institution in which he/she studied in proforma prescribed (Annexure-I) to this order. Further, the students submitting bogus minority community certificates shall be dealt with under the relevant sections of the I.P.C. apart from losing their seats following the due procedure.

(ii) Criteria for admission into minority Colleges of Education:-

It is clarified that only such of those candidates who have qualified at Ed.CET-2004 or Ed.CET-AC are eligible for admission into minority Colleges of Education, and those candidates who have not qualified at Ed.CET-2004 or Ed.CET-AC shall not be admitted into the minority Colleges of Education and no deviation is permitted in this regard. This condition is stipulated herein in order to implement the orders issued by Supreme Court of India and at the same time to ensure quality education to the students.

(iii) Procedure for filling of unfilled seats in 85% management seats in minority colleges:-

As the number of Ed.CET or Ed.CET-AC qualified minority candidates are lesser than the number of seats made available under 85% management seats in minority Colleges of Education, there is a distinct possibility of such seats remaining unfilled and to fill up such seats in the interest of students and managements, the following procedure is prescribed i.e., after admitting minority students duly following the procedure laid down in provisions (i) and (ii) of this order, if there are any unfilled seats, the same shall be notified and the Convener, Ed.CET-2004 shall allot candidates following the due procedure. Under no circumstance, the minority colleges shall admit students in 85% management quota, who do not satisfy the criteria laid down in the provisions (i) and (ii) of this G.O. If any violation is noticed, suitable action shall be taken to cancel the minority status of concerned College of Education apart from withdrawing No Objection Certificate issued by this Government and take action for de-recognition of the said college by National Council of Teacher Education, besides disallowing the irregularly admitted candidates from appearing at examinations by following the established procedure."

From the above extracted portions of the Government orders issued from time to time, it is clear that as there were reports of

students/candidates obtaining religious conversion certificates overnight by exploiting the provisions contained in the G.Os., the Secondary School Certificates or Transfer Certificates (T.C.) from the school from which they have studied is stipulated as the basis for the purpose of determining the minority status of candidates seeking admission in 85% management quota in the B.Ed., minority colleges. It is further made clear that under no circumstance, the minority colleges shall admit students in 85% management quota, who do not satisfy the criteria laid down in the provisions (i) and (ii) of G.O.Ms.No.57, dated 21.3.2005.

Further, interim order dated 27.4.2005 in WAMP.No.1767 of 2005 and batch in Writ Appeal No.928 of 2005 and batch makes it amply clear that the said order was intended to serve as an interim arrangement pending disposal of the appeals. Writ Appeal No.928 of 2005 and batch have since been dismissed on merits by judgment dated 23.8.2006, wherein the legality and validity of G.O.Ms.No.57 was upheld. It was further held that the provision made in Rule 3(iii) of the G.O enabling the Convenor to fill such of those seats remaining unfilled by the management is intended to sub-serve the cause of fairness, transparency and non-exploitation without in anyway interfering with the right of minority unaided professional institutions to admit students. It cannot, therefore, be said that Rule 3(iii) of the G.O is violative of Article 30(1) or any other constitutional or statutory provisions.

The detailed reasons set out in the judgment in Writ Appeal No.928 of 2005 and batch dated 23.8.2006 hold good in the present case as well and they shall be read as part of this order. By virtue of the same, the unfilled seats out of 85% management seats have to be

filled in accordance with the procedure prescribed in clause (iii) of G.O.Ms.No.57, dated 21.3.2005. In fact, there is no challenge to G.O.Ms.No.57 in this writ petition. The interim order made on 27.4.2005 gets merged with the final judgment in Writ Appeal No.928 of 2005 and batch.

In the light of the judgment in Writ Appeal No.928 of 2005 and batch, the contention of the petitioner that they are entitled to admit non-minority students to fill the seats remaining unfilled due to non-availability of students of concerned minority, without reference to the Convenor, Ed.CET, is untenable.

For the reasons mentioned above, we hold that the writ petition is meritless and is liable to be dismissed. Ordered accordingly.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

27th September 2006

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AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

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